

STAYED, TYPE I-FOIA

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-01566-CKK

KILMER v. U.S. CUSTOMS AND BORDER PROTECTION
Assigned to: Judge Colleen Kollar-Kotelly
Cause: 05:552 Freedom of Information Act

Date Filed: 08/02/2017
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: Federal Question

Plaintiff**PAUL F. KILMER**

represented by **Paul F. Kilmer**
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V.

Defendant**U.S. CUSTOMS AND BORDER PROTECTION**

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| Date Filed | # | Docket Text |
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| 08/02/2017 | <u>1</u> | COMPLAINT against U.S. CUSTOMS AND BORDER PROTECTION (Filing fee \$ 400 receipt number 0090-5058590) filed by PAUL F. KILMER. (Attachments: # <u>1</u> Civil Cover Sheet)(Kilmer, Paul) (Entered: 08/02/2017) |
| 08/02/2017 | | Case Assigned to Judge Colleen Kollar-Kotelly. (md) (Entered: 08/03/2017) |
| 08/03/2017 | | SUMMONS (3) Not Issued as to U.S. CUSTOMS AND BORDER PROTECTION, U.S. Attorney, U.S. Attorney General. (SUMMONS WERE NOT SUBMITTED AT THE TIME COMPLAINT WAS FILED) (zmd) (Entered: 08/03/2017) |
| 08/04/2017 | <u>2</u> | ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 08/04/2017. (DM) (Entered: 08/04/2017) |
| 08/04/2017 | <u>3</u> | ENTERED IN ERROR.....REQUEST FOR SUMMONS TO ISSUE filed by PAUL F. KILMER.(Kilmer, Paul) Modified on 8/7/2017 (znmw). (Entered: 08/04/2017) |
| 08/07/2017 | | NOTICE OF ERROR re <u>3</u> Request for Summons to Issue; emailed to paulkilmer@msn.com, cc'd 0 associated attorneys -- The PDF file you docketed contained errors: 1. Please refile document, 2. ENTERED IN ERROR; Incorrect forms; Refile using correct summons, AO 440. (znmw,) (Entered: 08/07/2017) |
| 08/09/2017 | <u>4</u> | REQUEST FOR SUMMONS TO ISSUE filed by PAUL F. KILMER.(Kilmer, Paul) (Entered: 08/09/2017) |

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| 08/09/2017 | <u>5</u> | SUMMONS (3) Issued Electronically as to U.S. CUSTOMS AND BORDER PROTECTION, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Consent Form)(zsb) (Entered: 08/09/2017) |
| 09/11/2017 | <u>6</u> | ANSWER to Complaint by U.S. CUSTOMS AND BORDER PROTECTION.(Simon, Jeremy) (Entered: 09/11/2017) |
| 09/27/2017 | <u>7</u> | ORDER. The parties shall file the schedule not later than October 30, 2017. Signed by Judge Colleen Kollar-Kotelly on 9/27/2017. (lcckk1) (Entered: 09/27/2017) |
| 09/27/2017 | | Set/Reset Deadlines: Parties shall file the schedule by 10/30/2017. (dot) (Entered: 10/03/2017) |
| 10/30/2017 | <u>8</u> | Joint STATUS REPORT by U.S. CUSTOMS AND BORDER PROTECTION. (Simon, Jeremy) (Entered: 10/30/2017) |
| 11/08/2017 | | MINUTE ORDER: The Court has received the parties' <u>8</u> Status Report and Proposed Schedule. For the reasons stated in the Status Report, Defendant shall provide the spreadsheet referenced in Paragraph 5 to Plaintiff on or before NOVEMBER 15, 2017. The parties shall file a further Joint Status Report with the Court on or before DECEMBER 15, 2017, that proposes a schedule for proceeding in this matter, including a processing schedule for any further production. Signed by Judge Colleen Kollar-Kotelly on November 8, 2017. (lcckk1) (Entered: 11/08/2017) |
| 11/09/2017 | | Set/Reset Deadlines: Joint Status Report due by 12/15/2017; (tth) (Entered: 11/09/2017) |
| 12/15/2017 | <u>9</u> | STATUS REPORT <i>of the Parties</i> by U.S. CUSTOMS AND BORDER PROTECTION. (Simon, Jeremy) (Entered: 12/15/2017) |
| 01/02/2018 | | MINUTE ORDER: The Court has received the parties' <u>9</u> Status Report and Proposed Schedule. With the consent of the parties, the Court adopts Defendant's proposed schedule for further processing and production of documents that may be responsive to Part 1, as well as documents that may be responsive to Part 5, of Plaintiff's Freedom of Information Act ("FOIA") request. Accordingly, Defendant shall make the next production on or before JANUARY 5, 2018 , and a further production on or before FEBRUARY 5, 2018 . Plaintiff requests that Defendant provide a "Vaughn index on a rolling basis," pointing to the "lengthy timetable proposed by CBP for production of records responsive to the FOIA request." ECF No. 9, ¶ 15. Defendant opposes, offering instead to provide the index at the time of anticipated summary judgment motions. <i>Id.</i> ¶ 7. At this time, the Court agrees with Defendant that Plaintiff's request for a Vaughn index on a rolling basis is premature. <i>See, e.g., Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n</i> , 711 F.3d 180, 187 n.5 (D.C. Cir. 2013) (observing that "district courts typically rely on [Vaughn indices] in adjudicating summary judgment motions in FOIA cases"). The Court may reconsider with appropriate justification. The parties shall file a further Joint Status Report with the Court on or before FEBRUARY 8, 2018 , that jointly proposes a schedule for proceeding in this matter, including, if necessary, a schedule for processing any other documents that may be responsive to Parts 1, 3, 4, 5, and 6 of Plaintiff's request, <i>see</i> ECF No. 9, ¶ 14 (raising concern that Defendant's proposed production may not be comprehensive), an updated processing schedule for production of documents responsive to Part 2 of Plaintiff's FOIA request, and a schedule for any summary judgment briefing in this case. In the Joint Status Report, Defendant shall indicate, in light of its initial review and production of documents responsive to Part 2 of Plaintiff's FOIA request, whether its decision not to search and review the documents according to Plaintiff's proposed search terms confirms that its approach to processing the documents is the more appropriate method by which to proceed. <i>See id.</i> ¶ 5, 10. Defendant shall also specify, in response to Part 2, "whether the approximately 230 individuals' identified on [Defendant's] spreadsheet include persons denied entry on national security grounds." <i>Id.</i> ¶ 13. The Joint Status Report shall also confirm whether the Court correctly infers, on the basis of the Complaint, that Plaintiff did not seek expedited consideration of his FOIA request at the time his request was filed. Signed by Judge Colleen Kollar-Kotelly on January 2, 2018. (lcckk1) (Entered: 01/02/2018) |
| 01/03/2018 | | Set/Reset Deadlines: Defendant shall make the next production on or before 1/5/2018, and a further production on or before 2/5/2018. (kt) (Entered: 01/03/2018) |

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| 02/08/2018 | <u>10</u> | STATUS REPORT of the Parties by U.S. CUSTOMS AND BORDER PROTECTION. (Attachments: # <u>1</u> Plaintiff's Exhibit to Status Report)(Simon, Jeremy) (Entered: 02/08/2018) |
| 03/12/2018 | <u>11</u> | Joint STATUS REPORT and Proposed Schedule by U.S. CUSTOMS AND BORDER PROTECTION. (Simon, Jeremy) (Entered: 03/12/2018) |
| 03/16/2018 | | MINUTE ORDER: The Court has received the parties' <u>10</u> Status Report and Proposed Schedule and their <u>11</u> Joint Status Report and Proposed Schedule. The parties continue to dispute the appropriate method to search and process records that may be responsive to Part 2 of Plaintiff's request. The friction appears to concern not only the scope of Plaintiff's request, but also to some extent Plaintiff's timing expectations; the Court notes that Plaintiff's FOIA request did not seek expedited treatment. In any event, the parties jointly propose an "interim" round of summary judgment briefing. As far as the Court understands and insofar as applicable to a given part of Plaintiff's request, this interim round would cover the adequacy of Defendant's search and withholdings with respect to all six parts of Plaintiff's request, except that, with respect to Part 2, the briefing would address only the 180-page sample of Part 2 documents that has been released thus far. Based on the Court's disposition of Defendant's and, if applicable, Plaintiff's motions for summary judgment, the parties would address remaining Part 2 issues accordingly. Defendant effectively proposes a stay of its search and production obligations during briefing on cross-motions for summary judgment. The Court shall not grant a stay that would amount to more than three months for briefing and further time for the Court's decision. Despite the inefficient use of Court resources that the parties' proposed method would entail, the Court is nevertheless prepared to grant the parties' request for a summary judgment briefing schedule, which would require the submission of a <i>Vaughn</i> index and any <i>in camera</i> submission, contingent on Defendant's agreement to continue to search and produce documents during the pendency of the motion. The parties shall file a further Joint Status Report by MARCH 30, 2018 , indicating whether they accept this contingency and, if still applicable, proposing such revised summary judgment briefing schedule as may then be appropriate. Signed by Judge Colleen Kollar-Kotelly on March 16, 2018. (lcckk1) (Entered: 03/16/2018) |
| 03/16/2018 | | Set/Reset Deadlines: Joint Status Report due by 3/30/2018. (dot) (Entered: 03/19/2018) |
| 03/29/2018 | <u>12</u> | Joint STATUS REPORT by U.S. CUSTOMS AND BORDER PROTECTION. (Attachments: # <u>1</u> Plaintiff's Attachment A, # <u>2</u> Plaintiff's Attachment B)(Simon, Jeremy) (Entered: 03/29/2018) |
| 04/30/2018 | | MINUTE ORDER: The Court has received the parties' <u>12</u> Joint Status Report and Proposed Schedule. The Court had agreed to entertain summary judgment briefing as to a portion of Plaintiff's FOIA request, "contingent on Defendant's agreement to continue to search and produce documents during the pendency of the motion." Min. Order of Mar. 16, 2018. Defendant has not consented to this contingency. Accordingly, in the interest of efficient resolution of this case, the Court shall not issue a schedule for summary judgment briefing at this time. Defendant shall resume processing and production to Plaintiff of documents responsive to Part 2 of Plaintiff's FOIA request. Defendant has indicated that it will make its first such production on April 30, 2018, "unless the Court orders otherwise." After its first production, Defendant thereafter shall make monthly productions to Plaintiff. The parties indicate that they continue to discuss a way to narrow the scope of Part 2 of Plaintiff's FOIA request. They shall submit a Joint Status Report to the Court on or before MAY 14, 2018 , regarding the status of these negotiations and Defendant's latest processing and production. The Court declines Plaintiff's latest, albeit narrowed request to compel Defendant to produce a <i>Vaughn</i> index, this time of only documents that Defendant has completely withheld. The Court again finds that production of a <i>Vaughn</i> index at this intermediate juncture would be premature, particularly in light of Defendant's rejection of the Court's above-described contingency for accepting summary judgment briefing at this time. The Court again recognizes that Plaintiff did not request expedited treatment of his FOIA request and that <i>Vaughn</i> indices are typically reserved for dispositive motions. See Min. Order of Jan. 2, 2018; Min. Order of Mar. 16, 2018. Signed by Judge Colleen Kollar-Kotelly on April 30, 2018. (lcckk1) (Entered: 04/30/2018) |

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| 05/01/2018 | | Set/Reset Deadlines: Joint Status Report due by 5/14/2018. (tb) (Entered: 05/01/2018) |
| 05/14/2018 | <u>13</u> | Joint STATUS REPORT by U.S. CUSTOMS AND BORDER PROTECTION. (Simon, Jeremy) (Entered: 05/14/2018) |
| 05/21/2018 | | MINUTE ORDER: The Court has received the parties' <u>13</u> Joint Status Report and Proposed Schedule, which indicates that the parties have agreed on a way to narrow Part 2 of Plaintiff's FOIA request and that Defendant has continued its review accordingly. Defendant shall continue to process and provide interim responses to Plaintiff on a monthly basis until all potentially responsive records have been processed. Defendant anticipates providing a final response by the end of July 2018. The parties shall file a further Joint Status Report by no later than AUGUST 14, 2018 , regarding the status of Defendant's latest processing and production, and proposing a briefing schedule, if necessary. Signed by Judge Colleen Kollar-Kotelly on May 21, 2018. (lcckk1) (Entered: 05/21/2018) |
| 05/21/2018 | | Set/Reset Deadlines: Joint Status Report due by 8/14/2018, regarding the status of Defendant's latest processing and production, and proposing a briefing schedule, if necessary. (dot) (Entered: 07/09/2018) |
| 08/14/2018 | <u>14</u> | Joint STATUS REPORT by U.S. CUSTOMS AND BORDER PROTECTION. (Simon, Jeremy) (Entered: 08/14/2018) |
| 08/16/2018 | | MINUTE ORDER: The Court has received the parties' <u>14</u> Joint Status Report and Proposed Schedule. Defendant indicates that it has completed its review and processing of Part 2 of Plaintiff's FOIA request, as narrowed, and accordingly now considers its review and processing of Plaintiff's entire FOIA request to be complete. In light of Plaintiff's intention to challenge the adequacy of Defendant's search and certain of its withholdings, the parties seek a briefing schedule. The Court shall adopt the parties' generous proposed schedule in the accompanying Scheduling and Procedures Order. Signed by Judge Colleen Kollar-Kotelly on August 16, 2018. (lcckk1) (Entered: 08/16/2018) |
| 08/16/2018 | <u>15</u> | SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on August 16, 2018. (lcckk1) (Entered: 08/16/2018) |
| 08/16/2018 | | Set/Reset Deadlines: Cross Motions for Partial Summary Judgment and for Leave to Conduct Limited Discovery due by 10/26/2018. Response to Cross Motions due by 11/28/2018. Reply to Cross Motions due by 12/28/2018. Defendant's Summary Judgment Motion due by 9/26/2018. Response to Motion for Summary Judgment due by 10/26/2018. Reply to Motion for Summary Judgment due by 11/28/2018. (dot) (Entered: 08/21/2018) |
| 09/21/2018 | <u>16</u> | Consent MOTION for Extension of Time to <i>File Defendant's Motion for Summary Judgment and for Adjustment of Related Deadlines</i> by U.S. CUSTOMS AND BORDER PROTECTION (Attachments: # <u>1</u> Proposed Order)(Simon, Jeremy) (Entered: 09/21/2018) |
| 09/24/2018 | | MINUTE ORDER: The Court has received Defendant's <u>16</u> Consent Motion for Extension of Time for Defendant to File Its Motion for Summary Judgment and for Adjustment of Related Deadlines. With Plaintiff's consent, the Court shall GRANT Defendant's <u>16</u> Consent Motion, for good cause shown. The Court shall adopt the parties' generous proposed schedule in the accompanying Amended Scheduling and Procedures Order. Signed by Judge Colleen Kollar-Kotelly on September 24, 2018. (lcckk1) (Entered: 09/24/2018) |
| 09/24/2018 | <u>17</u> | AMENDED SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on September 24, 2018. (lcckk1) (Entered: 09/24/2018) |
| 09/24/2018 | | Set/Reset Deadlines: Cross Motions due by 11/26/2018. Response to Cross Motions due by 12/31/2018. Reply to Cross Motions due by 1/22/2019. Summary Judgment motions due by 10/29/2018. Response to Motion for Summary Judgment due by 11/26/2018. Reply to Motion for Summary Judgment due by 12/31/2018. (kt) (Entered: 09/24/2018) |
| 10/24/2018 | <u>18</u> | Consent MOTION for Extension of Time to <i>File Motion for Summary Judgment</i> by U.S. CUSTOMS AND BORDER PROTECTION (Attachments: # <u>1</u> Proposed Order)(Simon, Jeremy) Modified on 10/25/2018 (ztd). (Entered: 10/24/2018) |

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| 10/25/2018 | | MINUTE ORDER: The Court has received Defendant's <u>18</u> Consent Motion for Extension of Time for Defendant to File Its Motion for Summary Judgment. This is Defendant's second request for an extension of the summary judgment filing deadline. The Court granted the first request and adopted the parties' "generous" proposed schedule. Min. Order of Sept. 24, 2018. Defendant's justification for both requests includes that counsel was preparing for and then was in trial. With Plaintiff's consent, the Court shall GRANT Defendant's <u>18</u> Consent Motion, for good cause shown. The deadline for Defendant's Motion for Summary Judgment shall be extended from October 29, 2018, until OCTOBER 31, 2018 . Other briefing deadlines in the <u>17</u> Amended Scheduling and Procedures Order shall remain unchanged. Signed by Judge Colleen Kollar-Kotelly on October 25, 2018. (lcckk1) (Entered: 10/25/2018) |
| 10/25/2018 | | Set/Reset Deadlines: Defendant's Summary Judgment Motion due by 10/31/2018. (dot) (Entered: 10/26/2018) |
| 10/30/2018 | <u>19</u> | MOTION for Summary Judgment , <i>Local Rule 7(h) Statement, and Supporting Memorandum</i> by U.S. CUSTOMS AND BORDER PROTECTION (Attachments: # <u>1</u> Declaration of Shari Suzuki, # <u>2</u> Table of Authorities, # <u>3</u> Proposed Order)(Simon, Jeremy) (Entered: 10/30/2018) |
| 11/25/2018 | <u>20</u> | Cross MOTION for Partial Summary Judgment , <i>In Opposition to Defendant's Motion for Summary Judgment, and Regarding Limited Discovery of Defendant</i> by PAUL F. KILMER (Attachments: # <u>1</u> Memorandum in Support MEMORANDUM OF POINTS AND AUTHORITIES, # <u>2</u> Statement of Facts MATERIAL FACT NOT IN GENUINE DISPUTE, # <u>3</u> Declaration Kilmer Decl w Exhs 2-8, # <u>4</u> Exhibit Kilmer Decl Exh 1 Part 1, # <u>5</u> Exhibit Kilmer Decl Exh 1 Part 2, # <u>6</u> Exhibit Kilmer Decl Exh 1 Part 3, # <u>7</u> Exhibit Kilmer Decl Exh 1 Part 4, # <u>8</u> Exhibit Kilmer Decl Exh 1 Part 5, # <u>9</u> Exhibit Kilmer Decl Exh 1 Part 6, # <u>10</u> Exhibit Kilmer Decl Exh 1 Part 7, # <u>11</u> Exhibit Kilmer Decl Exh 1 Part 8, # <u>12</u> Text of Proposed Order Proposed Order)(Kilmer, Paul) (Entered: 11/25/2018) |
| 11/25/2018 | <u>21</u> | Memorandum in opposition to re <u>19</u> MOTION for Summary Judgment , <i>Local Rule 7(h) Statement, and Supporting Memorandum</i> filed by PAUL F. KILMER.(See docket entry no. <u>20</u> to view.) (ztd) (Entered: 11/26/2018) |
| 12/21/2018 | <u>22</u> | Consent MOTION for Extension of Time to <i>File Combined Reply and Opposition in Connection with Cross-Motions for Summary Judgment</i> by U.S. CUSTOMS AND BORDER PROTECTION (Attachments: # <u>1</u> Proposed Order)(Simon, Jeremy) (Entered: 12/21/2018) |
| 12/26/2018 | | <p>MINUTE ORDER: The Court has received Defendant's <u>22</u> Consent Motion for Extension of Time for Defendant to File Its Reply and Opposition in Connection with Parties' Cross-Motions for Summary Judgment. This is Defendant's first request for an extension of the deadline for this filing, but third request in connection with the summary judgment briefing schedule. The Court granted the first two such requests. However, in light of defense counsel's "series of unexpected personal matters, including medical matters involving family members," the potential need for a supplemental declaration, and the other scheduling issues that counsel raises, and with Plaintiff's consent, the Court GRANTS Defendant's <u>22</u> Consent Motion, for good cause shown.</p> <p>Defendant shall file its Combined Opposition to Plaintiff's Cross-Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant, and Reply in Support of Defendant's Motion for Summary Judgment, by no later than JANUARY 18, 2019. Plaintiff shall file a Reply in support of his Cross-Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant by no later than FEBRUARY 5, 2019.</p> <p>The Court expects that Defendant will require no further extensions of the summary judgment briefing schedule. Signed by Judge Colleen Kollar-Kotelly on 12/26/2018. (DM) (Entered: 12/26/2018)</p> |
| 12/26/2018 | | Set/Reset Deadlines: Defendant shall file its Combined Opposition to Plaintiff's Cross-Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant, and Reply in Support of Defendant's Motion for Summary Judgment, by no later than 1/18/2019; Plaintiff shall file a Reply in support of his Cross-Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant by no later |

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| | | than 2/5/2019. (kt) (Entered: 12/26/2018) |
| 01/16/2019 | <u>23</u> | Unopposed MOTION to Stay , Unopposed MOTION for Extension of Time to <i>All Deadlines</i> by U.S. CUSTOMS AND BORDER PROTECTION (Pfaffenroth, Peter) (Entered: 01/16/2019) |
| 01/18/2019 | | MINUTE ORDER: The Court has received Defendant's <u>23</u> Unopposed Motion to Stay Proceedings and for Extension of Time in Light of Lapse in Appropriations. Defendant's Combined Opposition to Plaintiff's Cross–Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant, and Reply in Support of Defendant's Motion for Summary Judgment, are currently due by January 18, 2019. Defendant acknowledges the tardiness of its extension request pursuant to the Court's <u>2</u> standing order, but identifies certain exigencies associated with the lapse in appropriations. Plaintiff has indicated that he does not oppose the relief sought in the motion. In an exercise of the Court's discretion, the Court shall GRANT Defendant's <u>23</u> Unopposed Motion. Except as provided below, the Court shall STAY this case, including the aforementioned deadline for Defendant's forthcoming briefing. The parties shall file a notice within five business days of the restoration of the U.S. Department of Justice's funding and the resumption of its operations. Defendant has not indicated whether any agency personnel responsible for assisting with the preparation of Defendant's forthcoming briefing have been deemed essential. To the extent that those agency personnel have been deemed essential, they should continue to assist in such preparation so that, upon restoration of funding, the briefing may be submitted more promptly. Signed by Judge Colleen Kollar–Kotelly on January 18, 2019. (lcckk1) (Entered: 01/18/2019) |
| 02/01/2019 | <u>24</u> | Joint STATUS REPORT by U.S. CUSTOMS AND BORDER PROTECTION. (Simon, Jeremy) (Entered: 02/01/2019) |
| 02/01/2019 | | MINUTE ORDER: The Court has received the parties' <u>24</u> Joint Status Report. The parties identify the restoration of government funding. Accordingly, the Court hereby LIFTS the stay in this matter. Defendant shall file its Combined Opposition to Plaintiff's Cross–Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant, and Reply in Support of Defendant's Motion for Summary Judgment, by no later than FEBRUARY 15, 2019 . Plaintiff shall file a Reply in support of his Cross–Motion for Partial Summary Judgment and Regarding Limited Discovery of Defendant by no later than FEBRUARY 26, 2019 . Because this is the fourth extension of Defendant's deadlines for summary judgment briefing, the Court expects that Defendant will require no further extensions of the summary judgment briefing schedule. Signed by Judge Colleen Kollar–Kotelly on February 1, 2019. (lcckk1) (Entered: 02/01/2019) |